

**Before the
Federal Communications Commission
Washington DC 20554**

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In re)	
)	
Modification of Parts 2 and 15 of the)	ET Docket No 03-201
Commissions Rules for unlicensed devices and)	
equipment approval)	
)	
Report and Order Released July 12, 2004)	
)	

Petition for Reconsideration

Warren C. Havens ("Havens") and Telesaurus Holdings GB LLC ("Telesaurus") (together, "Petitioners") petition for reconsideration, in part, of the above-referenced Report and Order ("the Order"). Havens and Telesaurus each hold LMS Multilateration (hererin, "LMS") licenses for spectrum within the 902-928 MHz band (in A and C blocks). This Petition is limited to the 902-928 MHz band (the "Band"), and within it, the LMS A-, B-, and C- block spectrum.

Petitioners have stated in their filing in docket RM-10403 (initiated by Progeny LMS LLC) that they desire and intend to satisfy the spirit and intent of current Commission rules in Subpart M of Part 90 concerning LMS licenses, including the "Safe Harbor" rule regarding Part 15 operations within this Band, Section 90.361.

Petitioners ask that the Commission reconsider the Order for reasons described below, and suspend the Order with regard to the rules changes described in the Order pertaining to the technical allowances and requirements of Part 15 devices and systems in the Band, until such time as the Commission commences and completes a formal inquiry, with Public notice and comments, with regard to the potential effect of such changes to LMS licenses in the Band, and

either determines that there will be no material adverse effects, or that it will allow counterbalancing changes in or waivers or forbearance of LMS rules, such that the balance that the Commission intended and articulated, when establishing the LMS service and its rules, between high-power LMS systems and unlicensed devices and systems is maintained.

Petitioners and other LMS licenses are subject to the obligations in Section 90.353(d) (put in place at the request of parties who make and use Part 15 devices) which requires LMS system operators to design, construct, and field test their equipment and systems to attempt to minimize adverse effects upon the particular technology and system deployments of Part 15 devices in the region.¹ When the technology of such devices changes, as it will per the Order, then this LMS requirement is also necessarily and substantially changed. This rule requires coordination between LMS and Part 15 operators, with the burden on LMS, and this cannot efficiently or effectively be done when the Commission “moves the target” as it has in the Order.

There should be no changes in Part 15 rules regarding this Band that materially and adversely affect LMS rights, obligations, and operations without proper rulemaking in LMS Part 90 rules. (That is what various Part 15 interest argued in reverse in RM-10403.)²

The above position and request is not new. Petitioners submitted it to the Commission in

¹ Petitioners have invested substantial time and expense in development of technology and products for LMS

² While LMS licensees can make this case, such Part 15 interests have no vested rights to the spectrum in the Band, and without such rights they have no standing in rulemaking or other legal proceedings regarding the Band. In matters regarding the Order, they have standing to argue for what is in the public interest, but not what is their own interests. In addition, Petitioners have as much, if not more, basis to assert interests in use of the Band on a Part 15 basis than entities that have no rights to the Band: As indicated in its filings in RM-10403, Petitioners may use parts of the Band outside their LMS block on a Part 15 basis, and their use would be founded upon their vested rights to use the LMS spectrum. This would promote the public interest with regard to Part 15 use in the band, since only LMS licensees can use their license rights, including higher power and higher transmit height, to expand the range and protection of wide-area systems in the Band.

the past, most recently by way of their appeal to the DC Circuit Court, Case No. 03-1247. Petitioners reference and incorporate herein the filings they made in that case, copies of which the Commission has received. This case has not been decided.

In addition, increased flexibility granted to Part 15 devices, especially systems using Part 15 devices, will-- per the record before the Commission in the subject proceeding—will lead to increased or extended use of this spectrum band by Part 15 devices and systems of Part 15 devices resulting in adverse effects on LMS systems, and will change, between Part 15 and LMS operations, the regulatory coexistence balance that was established in Subpart M of Part 90 rules (the principal LMS rules) and described at length in the rulemaking decisions resulting in these Subpart M rules.^{3 4}

Also, the rule changes noted above impermissibly alters to the detriment of LMS licensees the foundation or premise of the “Safe Harbor” rule, section 90.361 (also within Subpart M).⁵

These rule changes grant of increased flexibility to unlicensed Part 15 devices in this

³ This balance relates to real-life *systems* or *aggregations* of many LMS devices verses many Part 15 devices, not to hypothetical one-on-one considerations as the Part 15 MO&O dealt with.

⁴ Part 90, Subpart M specifically deals with this balance between LMS systems and Part 15 operations in this spectrum band (including in the two rules cited in issues 2 and 3 set forth herein): Part 15 does not, and thus, changes to Part 15 rules that effect LMS should only take place or only be ultimately promulgated and decided via due-process rulemaking within this Subpart M, not via changes in Part 15 rules. This is equitable since LMS licensees have vested rights to the subject radio spectrum whereas Part 15 equipment vendors and operators do not.

⁵ This premise or foundation is described in the rulemaking decisions resulting in Subpart M rules and includes an stated assumption that Part 15 devices generally will not be located in close proximity to LMS transceivers, and that LMS operations will involve wide-area systems with many base stations and end-user transceivers with no duty cycle limits. Petitioner asserts that rule change that causes or supports greater amounts or extended use of the band by Part 15 devices—systems of devices-- and undercuts this foundational assumption.

spectrum Band shared with licensed LMS operations violates an essential principal of Part 15 regulation and operation, including under rule section 15.5, which is that unlicensed devices (individually *and in the aggregate*) may not interfere with licensed system operations.⁶

These changes unilateral grant of increased flexibility to unlicensed Part 15 devices constitutes an inequitable and impermissible taking of rights assigned to LMS licensees by the Commission under its auction rules in Part 1 and Part 90 that were paid for by LMS licensees pursuant to open-market auctions, and an impermissible granting of these rights for no consideration to Part 15 device equipment vendors and operators each of whom could have, but did not, bid for and acquire licenses in this band.

Respectfully,

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October 7, 2004

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⁶ As provided in rule section 15.5(a) and as described by the Commission in LMS rulemaking decisions, e.g., see FCC 97-305, paragraph 32 and other references therein.